

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Nicholas Marantz	Team: Team # 5	CCRB Case #: 200309070	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Sunday, 11/09/2003 8:20 PM	Location of Incident: Parkside Avenue & Flatbush Avenue	Precinct: 71	18 Mo. SOL 5/9/2005	EO SOL 5/9/2005	
Date/Time CV Reported Sun, 11/09/2003 9:38 AM	CV Reported At: IAB	How CV Reported: In-person	Date/Time Received at CCRB Thu, 11/13/2003 11:43 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Christopher Lee	12634	930549	071 PCT
2. POM Paul Insauto	14771	930399	071 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Christopher Lee	Abuse: Officer Christopher Lee stopped the car in which § 87(2)(b) was an occupant.	
B.POM Paul Insauto	Abuse: Officer Paul Insauto stopped the car in which § 87(2)(b) was an occupant.	
C.POM Christopher Lee	Discourtesy: Officer Christopher Lee spoke obscenely and/or rudely to § 87(2)(b)	
D.POM Christopher Lee	Force: Officer Christopher Lee struck § 87(2)(b) with a flashlight.	

Synopsis

§ 87(2)(b) filed a complaint at the 71st Precinct on November 9, 2003, alleging that on that date, officers, identified by investigation as Officer Christopher Lee and Officer Paul Insauto, stopped his vehicle (allegations A and B) at the intersection of Parkside Avenue and Flatbush Avenue in Brooklyn. The officers suspected that § 87(2)(b) was operating an unlicensed livery vehicle, or “dollar van.” § 87(2)(b) claimed that, during the stop, Officer Lee spoke discourteously to him (allegation C), and that Officer Lee struck him on the head with a flashlight (allegation D) before § 87(2)(b) fled the scene in his vehicle. The case was initially assigned to Investigator Monica Potts and was reassigned to the undersigned investigator on December 6, 2004. An IAB investigation determined the allegations of discourtesy and force to be unsubstantiated (enc. 3). § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Summary of Complaint

§ 87(2)(b) a § 87(2)(b) year old black male § 87(2)(b) went to the 71st Precinct stationhouse on November 9, 2003, alleging that an officer identified by investigation as Officer Christopher Lee struck him with a flashlight. An ambulance call report (enc. 6.a) indicates that § 87(2)(b) repeated this allegation to EMS at the 71st Precinct stationhouse. This allegation is also reflected on the nursing triage form completed at § 87(2)(b) on § 87(2)(b) (enc. 6.b). Photographs taken by IAB on November 9, 2003 (enc. 7) show a laceration above § 87(2)(b)'s right eye. IAB interviewed § 87(2)(b) on November 9, 2003 (enc. 8), November 10, 2003 (enc. 9), and November 21, 2003 (enc. 10). § 87(2)(g) § 87(2)(b) informed IAB that his vehicle lurched forward after he put it into drive, and that Officer Lee hit him over the head with his flashlight at this time. He claimed that Officer Lee told him to “hush [his] fucking mouth.” § 87(2)(b) failed to identify either Officer Lee or Officer Insauto from photo arrays.

§ 87(2)(b) was interviewed at his attorney's office at § 87(2)(b) in Brooklyn on January 14, 2004 in the presence of his civil attorney, § 87(2)(b) (enc. 11). § 87(2)(b) stated that on November 9, 2003 at 8:20 p.m. he was driving in the vicinity of Parkside Avenue and Flatbush Avenue in Brooklyn when he saw his friend § 87(2)(b) last name unknown, on the side of the street. § 87(2)(b) an old friend who he hadn't seen in a long time, waved him over. He flagged him down between Clarkson Avenue and Parkside Avenue. § 87(2)(b) was driving a 1994 white Dodge passenger van in which he keeps construction materials. He did not know the license plate number but they were Georgia plates. He had just come from § 87(2)(b), where he had eaten dinner, and was driving north on Flatbush Avenue to a girlfriend's house on § 87(2)(b).

§ 87(2)(b) pulled over to talk to § 87(2)(b) who got into the car for a short time. At about the same time, an officer, identified by investigation as Officer Christopher Lee, started to approach and § 87(2)(b) got back out of the vehicle. § 87(2)(b) did not know if § 87(2)(b) left or stayed in the vicinity. Officer Lee approached § 87(2)(b) from the passenger side, walked in front of the van, and came over to the driver's side. An officer identified by investigation as Officer Paul Insauto was with Officer Lee but was far away and did not interact with § 87(2)(b). Officer Insauto was to the front and to the right side of the van, and § 87(2)(b) did not know if he would have been able to see the interaction but stated that he probably could not.

Officer Lee asked § 87(2)(b) for his license and registration, and § 87(2)(b) asked why. Officer Lee responded that he had been watching him do “this” for awhile and repeated his demand for his license and registration. § 87(2)(b) protested that he did not know what “this” meant, and had never seen Officer Lee before. § 87(2)(b) reached for his license and registration but hesitated and asked Officer Lee why he was being stopped. Officer Lee repeated the demand, saying, “Give me your fucking license and registration.” § 87(2)(b) stated that he hesitated because when officers pull a motorist over in Georgia they explain why.

§ 87(2)(b) responded that he didn't like the way that Officer Lee was talking to him, and reached for his gear shift intending to move it into drive from park. § 87(2)(b) said he would go to the

precinct. He was still looking at Officer Lee. Officer Lee then allegedly struck § 87(2)(b) with his flashlight, on the right side of his face. The flashlight struck across his right eyebrow and the right side of his face. § 87(2)(b) sustained a laceration right above his right eyebrow, which was bleeding. During this interaction, § 87(2)(b)'s van had been in park but the motor was running. He had been there for two or three minutes with § 87(2)(b). § 87(2)(b) had no idea why Officer Lee hit him. Officer Lee never gave § 87(2)(b) any orders or instructions besides demanding his license and registration. Officer Lee did not say stop when § 87(2)(b) moved to change the gearshift. When Officer Lee hit him, he did not say anything that he recalled hearing. Officer Lee had the flashlight in his hand the whole time, and the first time he saw it was when Officer Lee was walking toward the van.

Other civilians had gathered by this time, but § 87(2)(b) did not recognize anyone else standing around, and stated that his full attention was on the officer. He did not know if § 87(2)(b) was still there at that point, and did not know any contact information for § 87(2)(b). He had known § 87(2)(b) when he was in high school in New York City. § 87(2)(b) did not know where § 87(2)(b) lived, and described him as a tall, dark-skinned man with a narrow face, and approximately 27 to 29 years of age.

§ 87(2)(b) went straight to the precinct, leaving Officer Lee and Officer Insauto standing there. They did not follow him. Officers at the 71st Precinct called the ambulance for him and he was taken to § 87(2)(b) where he received stitches. He did not remember the names of the officers he spoke with at the station house. He remembered that he spoke with a sergeant and a captain. § 87(2)(b) was never arrested or issued a summons. Prior to this incident, he had only had brief interactions with officers from the 71st Precinct. § 87(2)(b) was at the stationhouse for five to ten minutes and he never saw Officer Lee or Officer Insauto there. § 87(2)(b) went back to § 87(2)(b) a couple of weeks later to have the stitches removed. He had last gone to the hospital § 87(2)(b) prior to the interview.

Results of Investigation

Attempts to Contact Other Witnesses

On January 22, 2004, Investigator Potts conducted a brief canvass in the vicinity of Parkside Avenue and Flatbush Avenue in Brooklyn. There were two stores open that time near the corner where patrons and employees might have had a view of the street, one was a convenience store on the Northeast corner and one was a Chinese restaurant near 698 Flatbush Ave. Neither the two men behind the counter at the former, nor the young woman behind the counter at the latter, had any knowledge of the incident. Across the street on the corner was a Duane Reade, where no one inside would have been able to see the incident. The area is busy and commercial.

Officer Statements

Officer Paul Insauto

Criminal Complaint report #§ 87(2)(b) (enc. 13), completed by Officer Insauto at 11:35 PM on November 9, 2004, indicates that at 8:22 PM on that date, at the northeast corner of Parkside Avenue and Flatbush Avenue, Officer Lee and Officer Insauto conducted a car stop. The narrative is a less detailed version of the line of duty witness statement, described below. The reports notes that the case is open as IAB Log 03-2929-6 and that Captain Ricciardi of Patrol Borough Brooklyn South was notified. § 87(2)(b)

A line of duty witness statement completed by Officer Insauto on November 10, 2004 (enc. 14) indicates that when Officer Insauto and Officer Lee conducted the stop, three passengers exited the van. Officer Insauto heard Officer Lee explain the reason for the stop. After three passengers exited the van, Officer Lee asked the driver for his license, registration, and insurance card. Officer Insauto "saw the driver reaching over towards the passenger side and Officer Lee had his arm with the flashlight leaning in the van[.] ... [Officer Insauto] was walking towards the third passenger that exited the van to get some information[.] ... [Officer Insauto] heard the van rev its engine[.] [He] saw the brake lights come on and the driver stepped on the gas peddle [sic] and PO Lee was dragged by the van halfway thru [sic] the intersection due to his arm being stuck in the van."

Officer Insauto was interviewed by IAB on January 8, 2004 (enc. 15), § 87(2)(g)

Officer Paul Insauto of the 71st Precinct was interviewed at the CCRB on September 8, 2004 (enc. 16). On November 9, 2003, Officer Insauto worked in uniform from 5:30 PM to 2:05 AM assigned to foot post #8, which covers Flatbush Avenue between Winthrop Avenue and Parkside Avenue. One of the adjoining posts was covered by Officer Christopher Lee. His memo book indicates that at 8:20 PM he conducted a car stop at Flatbush Avenue and Parkside Avenue. At 8:22 PM, the vehicle, a white Dodge van, drove off, dragging Officer Lee.

Officer Insauto recalled that he was standing in front of a Popeye's restaurant on the northeast corner of Parkside Avenue and Flatbush Avenue, across the street from Officer Lee, who was standing on the northeast corner. Officer Lee called out to him to conduct car stops. They stood on the corner of Parkside Avenue and Flatbush Avenue, where they had a clear view of northbound traffic. Officer Insauto saw a dollar van stop at a bus stop on Flatbush Avenue at the intersection of Clarkson Avenue, fifty feet from where the officers were standing. The bus picked up passengers (Officer Insauto did not know how many). The officers decided that when the driver pulled up to the light, they would step out into the street and flag him down.

When the vehicle pulled up to the light, Officer Lee went around the front of the car to the driver's side and Officer Insauto approached the passenger side. Passengers started exiting the van from a side door on the passenger side, and Officer Lee directed Officer Insauto to inquire of the last passenger whether he or she had paid a fare. Officer Insauto saw the driver reach for his glove compartment. Officer Lee was leaning into the car with his flashlight. Officer Insauto did not recall in which hand Officer Lee held his flashlight. Officer Insauto did not hear the exchange between Officer Lee and § 87(2)(b). Six to eight passengers exited within two minutes. A couple of cars passed by in the outer lane.

As Officer Insauto, who had moved to the end of the van, turned to ask the last passenger (a female) whether she had paid a fare, the brake lights when on and the driver "floored it." As the van drove away, Officer Insauto could not see Officer Lee. Officer Insauto looked over, but Officer Lee was gone. Officer Insauto then saw Officer Lee three-quarters of the way into the intersection (twenty-five to thirty feet away). Officer Insauto did not have an opportunity to speak with the passenger. Officer Insauto ran to Officer Lee and asked whether he was okay. Officer Lee said that he was okay, but felt a "little tingle" on one of his shoulders. Officer Insauto did not recall which shoulder. Officer Insauto did not recall whether Officer Lee still had his flashlight in his hand at this time.

Officer Lee also said that he had been stuck inside of the van. He did not tell Officer Insauto how he had freed himself. Officer Lee did not say whether he had used on any force. He said that had been dragged and had been scared. Officer Insauto did not note any injuries on Officer Lee. A PBA delegate named Officer Hellem pulled up in a car, asked whether the officers had been involved in a car stop, and told Officer Lee to get into the car. Officer Lee departed with Officer Hellem and Officer Insauto went on meal. Officer Insauto did not hear Officer Lee say, "Give me your fucking license and registration," and did not say this himself.

Officer Christopher Lee

A line of duty report was completed on November 9, 2004 (enc. 17). Officer Lee wrote, "While doing a car stop the driver of the vehicle took off while my right hand was on the handle and jolted my arm and my back was slightly twisted while trying to move out of the vehicle's way, in a fast manner."

Officer Lee was interviewed by IAB on January 8, 2004 (enc. 18) and May 29, 2004 (enc. 19).

§ 87(2)(g)

Officer Christopher Lee of the 71st Precinct was interviewed at the CCRB on September 30, 2004 (enc. 20). On November 9, 2004 he was working on a footpost covering one square block bordered by Flatbush Avenue, Parkside Avenue, Clarkson Avenue, and Bedford Avenue. Officer Insauto worked the adjoining post. Officer Lee worked from 6:00 PM. until 2:00 AM. the next morning. He was in uniform.

Officer Lee said that he observed a dollar van dropping off and picking up passengers at a bus stop northbound on Flatbush Ave. When he first saw it, he and Officer Insauto were on the sidewalk across the street on Flatbush between Parkside and Clarkson. Officer Insauto also saw the van. The van stopped at a

red light and the officers approached. The van stopped about a car-length before the crosswalk near the corner of Flatbush and Clarkson and was basically double-parked because it had pulled next to a row of parked vehicles so he couldn't pull over any further when the officers stopped him. There was a car parked in front of him as well.

Officer Lee went up to the driver and explained why he'd been stopped. Officer Lee was in the street a little bit. § 87(2)(b) was yelling "Why" and saying he wasn't doing anything. § 87(2)(b) was speaking loudly. Officer Lee had never seen him before. Officer Insauto was on the other side of the vehicle talking to the passengers who had gotten out to verify that it was a for-hire vehicle. Approximately five or six people got off and approximately four passengers got in. Officer Lee asked the § 87(2)(b) for the paperwork. § 87(2)(b) was upset and was "mouthing off," but Officer Lee did not remember exactly what he said. The van was high off the ground, and Officer Lee had his left hand with the flashlight in the window looking inside. His right hand was on the doorknob, which was a handle with a knob. His flashlight was about four inches into the window because Officer Lee couldn't see and § 87(2)(b) was reaching into the glove box. Officer Lee's forearm was against the window but not inside of the van. The conversation lasted about fifteen seconds. The van's motor was still running and was in park. Officer Lee never asked § 87(2)(b) to shut off the van.

§ 87(2)(b) reached over into the glove compartment to get his paperwork, which was in a package. In "one fast motion," § 87(2)(b) dropped the van into drive with his right hand and "floored it." Officer Lee couldn't estimate how fast § 87(2)(b) was going. His left arm with the flashlight came out right away but Officer Lee couldn't get his right arm out of the handle. He did not know why he could not release the handle. He believed the force of being pulled was preventing him from getting his hand out. § 87(2)(b) pulled him for about fifteen feet. Officer Lee finally got free. He was about ten to fifteen feet from the crosswalk in the intersection. Officer Lee was running alongside the vehicle and his feet were on the ground. At the last minute his feet were stumbling. He stumbled out and went to the curb. His shoulder hurt a bit. § 87(2)(b) went down Flatbush Avenue and ran through many red lights "like a maniac." Officer Insauto was still on the right side of the van. Officer Lee saw § 87(2)(b) run four red lights. § 87(2)(b) went around the cars that were stopped at red lights. No one else was injured.

Neither Officer Lee nor Officer Insauto thought it necessary to put the call over. Officer Lee walked over to the curb and told Officer Insauto that his shoulder really hurt. It was tingling like it had fallen asleep. They stood there. Officer Lee said that dollar vans had taken off on him before and he did not think he should start a car chase because of the van. He was afraid that officers coming to back him up would get hurt, and said that he was also embarrassed because he had been dragged and people on the street were laughing at him and making fun of him. Officer Lee had never been instructed about when to start a car pursuit, but made the determination that it was not worth it in this case.

They were standing on the sidewalk and Officer Lee noticed the PBA delegate from his precinct drive by about half an hour later. He hadn't gotten his PBA card yet for that year and wanted one so he flagged him down. The PBA delegate, identified by investigation as Officer Thomas Hellem, asked him if he had a car stop there and told him that § 87(2)(b) had been injured. Officer Hellem told Officer Lee to get into the car and not to say anything to him and that he needed a lawyer. Apparently the delegate had been at the station house. He returned to the precinct. Officer Insauto stayed on patrol.

§ 87(2)(b) had two warrants and a suspended license and was later arrested. Officer Lee had the description of the van and knew that the van had out of state plates and was just going to look out for the van. Officer Lee never filed a 61 about that incident but one was filed for assault against him because he had been injured. Officer Lee didn't fill it out. Officer Lee explained what had happened to Officer Insauto at the scene before he went to the station house.

Officer Lee is right-handed, and said the flashlight was a three-battery flashlight, about a foot and a half long made of metal, and is not that heavy. There was no blood on his flashlight. After he returned to the precinct his arm was really hurting and he decided to go to the hospital. He learned there that his arm had been sprained. Officer Lee went line of duty for a couple of days and returned on restricted duty.

There were no other officers from adjoining footposts present and no witnesses. Officer Lee did not know when § 87(2)(b) was arrested. Officer Lee was not aware of anything that could have caused § 87(2)(b)'s injuries. Officer Lee denied that he intentionally struck § 87(2)(b) with his flashlight. Officer Lee did not interact with him ever again. Officer Lee denied that he cursed at § 87(2)(b). He never spoke about this incident to anyone other than IAB. Officer Lee had been out of the academy for four months when this incident occurred.

Additional Officer Interviews

Sergeant Michael Guccione and Sergeant Christopher Connolly of the 71st Precinct were interviewed by IAB on November 12, 2003 (enc. 21-22). Officer Thomas Hellem was interviewed by IAB on December 17, 2003 (enc. 24) and January 8, 2004 (enc. 25). Officer Carl Carrara was interviewed by IAB on January 8, 2004 (enc. 27). None of their statements are relevant to this investigation.

Medical Records

§ 87(2)(b)

The ambulance call report for § 87(2)(b) (enc. 28.a) indicates that the EMTs encountered § 87(2)(b) at the 71st Precinct stationhouse, where he was waiting for them. He had a 1" open laceration at his right eyebrow; the bleeding was controlled; he denied dizziness, nausea, and vomiting. His chief complaint was that "a cop hit [him] with a flashlight."

The § 87(2)(b) triage report (enc. 28.d) is substantively similar to the ambulance call report.

The nurse's observation record (enc. 28.f-g) indicates that § 87(2)(b) was discharged with instructions given for medications, head wound care, pain management, and follow-up care. § 87(2)(b) reported no additional complaints or apparent neurological complications and complained of a slight headache.

The consultation report of § 87(2)(b) (enc. 28.h-k) indicates that the wound was treated with six sutures and an oral antibiotic. A CAT scan indicated no fracture.

Reports of follow-up visits (enc. 28.l-s) contain no relevant information.

Officer Christopher Lee

The ambulance call report for Officer Lee (enc. 29.f) indicates that EMS arrived at the 71st Precinct stationhouse to find Officer Lee standing. Officer Lee had been injured during an arrest. § 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Police Department Documents

71st Precinct Aided Report Worksheet #§ 87(2)(b) (enc. 30) indicates that at § 87(2)(b), § 87(2)(b) was transported to § 87(2)(b). The report indicates that § 87(2)(b) came to the stationhouse claiming to have been involved in an altercation with a police officer. He stated that he suffered a laceration above his eye as a result. The online Aided report (enc. 31) includes the same information.

The online Aided report worksheet for Officer Lee (enc. 32) indicates that Officer Lee § 87(2)(b)

The 71st Precinct command log (enc. 33) indicates that at 8:10 PM, § 87(2)(b) came to the stationhouse with a “laceration over the eye, alleging abuse on Flatbush [Avenue] and Parkside [Avenue].” The duty captain was notified and § 87(2)(b) was removed to § 87(2)(b)

Police Laboratory Analysis Report #§ 87(2)(b) (enc. 34) indicates that an examination of Officer Lee’s flashlight “failed to disclose any hairs adhering thereon.”

DMV Records

§ 87(2)(b) surrendered his New York driver’s license on § 87(2)(b) (enc. 37). His Georgia motor vehicle records are not available. § 87(2)(b)

Civil Case Documents

A notice of claim (enc. 36), filed on § 87(2)(b) s behalf by the firm of § 87(2)(b), indicates that § 87(2)(b) sustained “serious injuries the full extent of which are currently unknown including injuries to the right eye requiring 6-7 sutures with resultant scarring, face and head, and other physical injuries, as well [as] mental anguish and other psychological injuries; fear, anxiety, nightmares, shame, humiliation, indignity; damage to reputation and credit, loss of earnings capacity and capability, and all damages sustained as a result of the claims enumerated above.” The notice contends that § 87(2)(b) has been damaged in the sum of \$3,000,000.00 and that § 87(2)(b) makes claim for an additional \$3,000,000.00 in punitive damages.

Civilian Conviction History

A BADS name search for § 87(2)(b) with a start date of January 1, 2001 (enc. 35) yielded negative results.

Police Officer CCRB History

Officer Lee and Officer Insauto have no prior CCRB allegations in their two-year tenures (enc. 1).

Complainant CCRB History

§ 87(2)(b) has filed no additional CCRB complaints (enc. 2).

Conclusions and Recommendations

Undisputed Facts

Officer Lee and Officer Insauto stopped § 87(2)(b) s vehicle. § 87(2)(b) drove away before the stop was concluded.

Facts in Dispute

Officer Lee and Officer Insauto claimed to have observed § 87(2)(b) picking up passengers prior to the stop. § 87(2)(b) denied having done so, and contended that he was not operating a passenger van service. According to § 87(2)(b) Officer Lee hit him on the head with a flashlight before he drove off. Officer Lee claimed that he did not know whether he ever struck § 87(2)(b) with his flashlight, and that if he did so, it was unintentional and occurred after § 87(2)(b) sped away. § 87(2)(b) also alleged that Officer Lee spoke discourteously to him, but Officer Lee denied this.

Police Officer Identification

Officer Lee and Officer Insauto acknowledged stopping § 87(2)(b) and Officer Lee acknowledged interacting with him.

Credibility

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)
[REDACTED]

Allegation A: Abuse of Authority – Officer Christopher Lee stopped the car in which § 87(2)(b) was an occupant.

Allegation B: Abuse of Authority – Officer Paul Insauto stopped the car in which § 87(2)(b) was an occupant.

Officer Lee and Officer Insauto plausibly claim that they stopped § 87(2)(b) because he was illegally operating a livery vehicle. § 87(2)(b)

According to Kamin's *New York Search and Seizure*, "if [an] officer is able to articulate a violation of the Vehicle and Traffic Law upon which he based the stop of the vehicle, New York courts will find the stop valid" (enc. I.b) § 87(2)(g)

Allegation C: Discourtesy – Officer Christopher Lee spoke obscenely and/or rudely to § 87(2)(b)

§ 87(2)(b) alleged during his CCRB interview that Officer Lee said, "Give me your fucking license and registration." He told IAB that Officer Lee said, "Hush your fucking mouth," but did not allege to IAB that Officer Lee said, "Give me your fucking license and registration." § 87(2)(g)

[REDACTED]

Allegation D: Force – Officer Christopher Lee struck § 87(2)(b) with a flashlight.

The account that § 87(2)(b) provided to IAB regarding the use of force is the most plausible version. § 87(2)(b) told IAB that he put his car into drive, it lurched forward, and Officer Lee hit him over the head with a flashlight. § 87(2)(g)

[REDACTED]

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: